

STATEMENT OF VIEWS ON BOUNDARY FORMATION IN ALASKA

By

**Nancy (Cannington) Galstad and Kathie Wasserman, DBA SOLUTIONS Inc
Former Local Boundary Commissioners (1995-2001)**

We believe everyone involved in the process of borough formation in Alaska finds the current process flawed, with no offer of incentives. We would request that the Local Boundary Commission include our comments in their February 19th report to the Alaska State Legislature in addressing this issue.

As former Commissioners on the Local Boundary Commission, we believe the process needs to be reviewed and *changed*. We are not alone in this belief, as Southeast Conference, the Southeast Conference of Mayors, the Alaska Municipal League and some municipalities, have recently passed resolutions that call for the establishment of more flexible boundaries. We support that resolution in that it requests a review of the regulations and standards under which the Model Borough Boundaries were established. The current process, based on the Model Borough Boundaries, attempts to *force* unrealistic borough boundaries upon huge areas that may encompass differing cultures and tribes, differing economic circumstances, and does not, in most cases, follow the Regional Education Attendance Areas (REAs) as mandated in AAC 3. 110.060(c).

The December 9th meeting includes mention that a few complaints have been received regarding the REAs. While Model Borough Boundaries are said to closely link with REA boundaries, only three of the eight actually do so. Further, REA complaints would probably not be directed to the Local Boundary Commission, but rather to the Alaska Department of Education. Even if problems do exist with REA boundaries, they do not affect nearly the number of people that problematic borough boundaries might.

The Commission Chairperson, in the December 9th meeting, acknowledged in passing, the resolution accepted by the Southeast Conference of Mayors, Southeast Conference and the Alaska Municipal League concerning the revisit and/or updating of the Model Borough Boundary study. However, the Commission then immediately proceeded with the list of potential borough areas based on that same current Model Borough Boundary study that was at issue with so many local government officials.

The Model Borough Boundaries were established in 1991, through a process of public hearings, held by a former Local Boundary Commission. The economic climate in Alaska was much different than today. The three major economic influences upon which the state relied for revenues (oil, fishing and timber) were still very healthy. Through regulation changes, declines and differing world markets, impacts have been felt in all Alaskan communities. As the State of

Alaska has had to rein in its spending habits, the burden and shortfall for many services has been shifted to local governments. Local sales tax revenues have been negatively impacted by e-commerce, while the Legislature has been considering a statewide sales tax, which would further erode the ability to tax locally. All this and more has happened since 1991. These changes have impacted not only local economies, but also population demographics due to the loss of jobs.

Changing factors in our State are many; population shifts, resource declines, economic changes, stronger acknowledgement of cultural ties, reapportionment, etc. As usual, the DCED staff, with regard to SB 359, has done an exemplary job of pulling so much information together in such a short amount of time. However, due to no fault of their own, much of the information is already outdated with regard to area conditions. If pertinent information, gathered a number of weeks ago is not current, this only reinforces the need for flexible standards that are based on changes in communities, not changes in Commissioners or Commissioners' changing interpretations.

The Local Boundary Commission seems to give little weight to these issues as they carry out the mandate of SB 359. In the December 9, 2002 meeting, the Commission Chairman recommended, with Commission concurrence, that the Model Borough Boundaries be adopted as a starting point for their discussion. Herein lies the problem. How is a solution possible if the "problem" is adopted as the starting point? The Alaska Constitution, Article X, Section 3, requires the entire state to be divided into boroughs, organized and unorganized. It further provides that each borough must embrace an area and population *with common interests to the maximum degree possible* (emphasis added). The Model Borough Boundary philosophy seems to contradict this constitutional standard.

The Alaska Constitution further, allows for *mergers and consolidations*. This standard appears to be ignored by DCED and the LBC when looking at borough formations. If areas are forced to encompass such huge areas to begin with, as the Model Borough Boundaries dictate, mergers and consolidations in the future would be impossible due to their unmanageable size.

We believe that the actual Commission process warrants change, as well. Law forbids LBC Commissioners from having ex-parte contact (3AAC 110.500) with *anyone other than DCED staff* concerning any pending petition/action before the Commission. DCED staff advises petitioners, assists with the petition process, researches, reviews and evaluates the petition. DCED then produces a Preliminary Report that is made public and allows for responsive comments. This is followed by a Final Report with recommendations to the Commission to adopt, deny, or adopt the petition with modifications.

Generally at the juncture between the Preliminary and Final Report, the Commission receives the first information it has seen on the petition. This comes

in the form of a stack of documents that includes all substantiating documentation (petition, maps, audit reports, independent studies, etc.) from the petitioner, written public comments (which at times can be substantial) the Preliminary Report with recommendations and the Final Report. This huge amount of paperwork (record, November 2001, Homer Annexation – 37 lbs. of paperwork) must be read, analyzed and compared to the recommendations of staff in a very short period of time by unpaid Commission appointees who have full-time jobs and families. Included in this time period is travel to and from the hearing site.

While we understand the need to limit *ex parte* contact, we believe that the Commission should be actively *involved* in the decision-making process as it develops. They should receive any materials at the time those materials are accepted for consideration by staff, and attend any required public hearings held within the affected areas. This would allow them the opportunity to receive a fair and balanced picture of the proceedings rather than relying on the information once the petition process, absent the final public hearing, is completed.

One suggestion might be to place the Commission under the Department of Law, as the Commission is deemed to be a *quasi-judicial* body. The legislature needs to provide more staff positions as the huge workload currently rests on one staff member and his technical assistant. Absent the institutional memory and tremendous dedication of this 23-year LBC employee and his assistant to handle the workload of many, one cannot imagine the void that would be created or the resultant backlog of petitions.

We further believe that, as requested by Southeast Conference, Southeast Conference of Mayors, the Alaska Municipal League and municipalities, that a review of the standards should be undertaken. We view the Model Borough Boundaries standard to be a major disincentive for borough formation and feel it should be deleted from the Administrative Code. However, if there is to be such a thing as “model borough boundaries,” they should have a complete review every five years to consider the changes in the economic climate affecting jobs, population shifts, education and the very ability of local government to operate efficiently and effectively.

We feel the process has evolved into something different from that envisioned by the founders of our Constitution. Alaska Statutes were developed as a guide to form boroughs. Those statutes are straightforward and clear. The development of Administrative Code standards by the DCED is, however, where the process begins to erode; one of them being the standard for the Model Borough Boundaries (3 AAC 110.190 (c)). In our opinion, this standard has been held to as high a standard and weighted as heavily in the decision making process as the Constitution or the Alaska Statutes.

The Commission states they are given broad latitude in decision-making, however, we do not see that power given under law, but instead only through Supreme Court decisions (*Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d, 92,98, Alaska, 1974 and *Valley's Borough Support Committee v. Local Boundary Commission*, 863 P.2d 232,234 Alaska, 1993). It is apparent to us that DCED has exercised that broad latitude to interpret whether standards are met to a degree that a petitioner cannot possibly meet if they have not first met the preconceived idea of DCED's concept of "how the state should look." A *prime* example is the recent denial of the only borough proposal to come before the Commission in over 10 years. Skagway borough proposal (September, 2002) demonstrated that it had much more "common interest" with its neighbor, the Yukon Territories, than it did with its neighbor, the Haines Borough. Yet, the petition was denied. The "common interests" with Haines was touted to be manifest, though testimony from representatives of both Skagway and Haines argued to the contrary. The Haines Borough even passed a resolution in support of a Skagway borough.

Absent any clear and convincing reason to deny Skagway's petition based on the standards, language was used, such as "*narrowly meets*," "*minimally met*," "*in a narrow interpretation of*," "*when applied in the proper regional context*," "*when...standard is applied in an appropriately broad context*," "*when applied in the broader regional context*," and "*unjustifiably small*," in the Preliminary Report (emphasis added). In the final decisional transcriptions, the Skagway petition was denied based on a number of points pulled from a dissenting opinion from an earlier Yakutat Borough formation. These points were not discussed by Commissioners in the public hearing from which the transcriptions were based. They were added after the fact.

It is interesting to note that in the Commission's first cut to forward to the legislature, the list of areas that could potentially form boroughs is based on economic ability. As much of this whole discussion centers on economics, we find it ironic that a community such as Skagway, having proven itself financially capable of supporting borough government and in light of increased pressure for areas to form boroughs, saw their petition denied by the Local Boundary Commission. The "future" decline of areas is used as a basis for exclusion from this list of eight, as well. This also seems confusing as the trend of increases in the Skagway area was disregarded during that hearing.

This current push for borough formation is based on action from legislators who are concerned with the transfer of education costs onto local governments and other economic factors. Let us not forget, however argued, that Impact Aid/PILT is indeed a local contribution and should be recognized as such. The state must provide incentives to form boroughs such as a less restrictive and tedious permitting process and should agree to be a partner in the development of local government entities.

It should be noted that there are 11 First Class or Home Rule cities in the list of eight potential boroughs to be forwarded to the Legislature. Those communities already support their own schools. Those small communities in outlying areas, as stated over and over in the report done by LBC staff, often are subsistence communities without the ability to pay for their own schools. Therefore, will we simply see the burden of supporting schools go from the State coffers to the Borough coffers, supported by the tax payers in the “wealthier” communities and/or simply surrounded by large expanses of uninhabited land, changing virtually nothing.

Mention is made throughout the LBCs public meetings regarding the lack of time with which to accomplish this task. We agree that it is unfortunate that an issue of such concern to the residents of the State, and which involves so many aspects of state and local government, should be required to be completed in such a short time, allowing no time for site visits and very little for public involvement and/or comments. The December 9th meeting briefly mentions face-to-face comments and travel to affected communities, but we have seen no sign of that to date. Without a public process that allows the opportunity and time to suggest alternatives and options about our own areas, much less the list of eight areas potentially forwarded to the Legislature, how can one reasonably and credibly answer one of the Commissioner’s ill-defined questions as to whether the list of eight areas seem “out of whack?”

During the January 22, 2003 “listen only” meeting, reference was made to the inclusion of Kake and Angoon into the Glacier Bay Borough. On what basis was this idea formed? Has there been public comment requesting or suggesting this new configuration? Has there been any investigation into actual distance, transportation, communication and issues with these areas? More importantly, however, these types of suggestions show that the standards continue to be moving targets, leaving the public unsure as to when areas will be held to the strictest letter of the regulations (i.e. Model Borough Boundaries) and when the regulations will be disregarded substantially.

We are unclear as to why the decision was made to exclude areas that are partially in existing boroughs? Again, Skagway, attempted to accept the obligations of a borough government, but has been removed from the list that instead focuses on areas that have not (up to this point) actively stepped forward, for a number of various reasons. According to transcriptions, some of these decisions were made based on the “familiarity” of the Anchorage Chairman, to certain locales. If the rest of the Commission is not allowed adequate time to research this list on their own, this method seems tenuous at best, producing results based not on facts, but on summations.

We are concerned as to the State’s long-range plans for those communities whose names will NOT be passed on to the Legislature. Will we simply continue to have some areas organized and others unorganized as now, simply changing

the configuration? Or rather, can we instead spend the time identifying incentives and flexible, evolving methods to accomplish borough formation across the entire state; methods that work positively for communities, rather than methods that are driven by fear of what the State or neighboring areas might do?

Until now, the State Legislature has been unwilling to serve as the Assembly of the Unorganized Borough. They have failed to provide the \$30,000 appropriation for Borough Feasibility studies under AS 44.33.840. The Local Boundary Commission spent much time discussing a cover letter meant to assure the people of Alaska that this report was given to the Legislature NOT to be used as a precursor to the State's requirement of a petition from the affected areas. However, the results of this report will have very little to do with the spirit in which the report is delivered, but rather in the spirit of how the Legislature decides to accept it. If the State of Alaska can establish a means to make uniform comparisons of the property tax base of municipal governments, it can certainly provide for clean and concise language in standards to be met to form boroughs.

To summarize, we believe that concentration must be given to the big picture. What is the overall goal and how do we get there in ways that benefit the residents of this State, as well as their local and State governments. We think it is unwise to proceed with a method that can only serve to continue to be met by a percentage of the State. We would propose addressing first the incentives or lack thereof, and the barriers that discourage or prohibit an area from borough formation. We would be happy to help identify specifics as they relate to these suggestions.